

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES M. BREWSTER,

Petitioner,

v.

COMMISSIONER, INTERNAL REVENUE
SERVICE,

Respondent.


Case No. C05-5120FDB

ORDER GRANTING UNITED
STATES' MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER
JURISDICTION

This matter is before the Court on an appeal of a levy action for collection of frivolous return penalties, which was sustained by an IRS Appeals Officer. Petitioner erroneously appealed to the United States Tax Court, and the matter was dismissed for lack of jurisdiction. Petitioner had 30 days to file in the District Court, the court with jurisdiction over the Section 6702 penalties against Petitioner. 26 U.S.C. § 6330(d)(1). Plaintiff failed timely to file his complaint in the District Court, having filed it thirty-four days after the Tax Court's dismissal. The limited waiver of sovereign immunity set forth in Section 6330(d) does not apply, this Court, thus, lacks subject matter jurisdiction over this cause of action, and it must be dismissed. The record indicates that Plaintiff has been served with this motion but has filed no response.

ACCORDINGLY, IT IS ORDERED: The United States' Motion To Dismiss for Lack of Subject Matter Jurisdiction [Dkt. # 6] is GRANTED and this cause of action is DISMISSED with prejudice.

DATED this 2nd day of September, 2005.


FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE